

Saving Probate Taxes: Two Wills

By: [Natalie Schernitzki](#)

Although your executor is legally entitled to deal with your assets immediately upon death, the issuance of a Certificate of Appointment by the Court (also called a probate certificate) is usually required by most third parties as a condition of recognizing the rights and authority of your executor to transfer title of your assets (such as publicly traded shares and real estate).

Probate serves as proof to financial institutions, financial advisors, the land registry office and others that your Will has been certified by the Court and that your executor is authorized to represent your estate.

When a Will is probated in Ontario there is an estate administration tax (or probate tax) payable on the value of the assets being probated. The tax is approximately 1.5% of the value of the assets. However, not all assets warrant probate – certain assets such as personal property including jewelry, paintings, furniture and privately held shares can be transferred to beneficiaries without the necessity of probate because there is no third party involved (such as a financial institution) (for more information see: *Saving Probate Taxes: Two Wills - Shares in a Private Corporation*). When assets can be transferred without the involvement and cooperation of third parties requiring a Certificate, there is no need to have those assets subject to probate.

Accordingly, a review of your assets might reveal that your estate could save tax if you had two Wills, one dealing with all the assets that require probate and one dealing with all the assets that do not require probate. The tax will only be charged on the value of the assets governed by the first Will because there is no need to apply to have the second Will probated. This means that no estate administration tax is payable on the value of the assets governed by the second Will.

Take this example:

Betty Jones, an Ontario resident, has an estate valued at \$4 million. Her assets include a home worth \$1,100,000, investments worth \$800,000, jewelry worth \$30,000, an art collection worth \$70,000 and shares in a privately held company worth \$2,000,000.

If Betty were to pass away today, probate tax on her estate would be about \$59,500. However, if Betty had two Wills, a primary Will dealing with the home and investments that would be probated and a secondary Will dealing with the jewelry, the art collection and the shares that would not be probated, Betty would save her estate at least \$31,500 in probate fees, \$29,500 on the shares alone.

Please click [here](#) to read more about saving probate taxes.

For more information on [estate planning and estate litigation matters](#) contact [Natalie Schernitzki](#) at (416) 368-0600 or by email at nschernitzki@businesslawyers.com.

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Saving Probate Taxes: Two Wills - Shares in a Private Corporation

By: [Natalie Schernitzki](#)

This further to my article called [Saving Probate Taxes: Two Wills](#). For obvious reasons, when engaging in estate planning activities, the goal is to employ strategies that will reduce the value of the estate submitted for probate, which will in turn reduce the probate tax.

The use of dual Wills has become an effective estate-planning tool in Ontario, specifically in a situation where a person intends to transfer privately held shares of significant value. Dividing your assets into two separate wills, and having one will that deals with the shares in the private corporation separate from your other assets, can help a business owner shelter that asset from taxation thereby saving thousands of dollars for his or her beneficiaries.

Normally, when a person holds shares in a private company they know the directors personally and, in fact, it is not uncommon for the directors to be family members. In such circumstances it won't be necessary to prove to the directors that your last Will is your last Will and that your executor has authority to deal with your assets. Because there is no unrelated third party and no need for the executor to produce a probated Will, there's no need to have the secondary Will certified by the Court. The directors can transfer the shares without probate thereby saving the estate the taxes that would normally be calculated on the value of the shares if they were being transferred pursuant to a will submitted for probate.

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